

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 21296 of 2004

Between:

M/S. JAYALAKSHMI AGENCIES, PALAMANER,
Chittoor District. Rep. by its Proprietrix
Smt. G.R.Bharathi, W/o. G. Raghu, Aged about 35 Years.

..... PETITIONER

AND

- 1 The Additional Commissioner of Commercial Taxes (Legal), O/o. The Commissioner of Commercial Taxes, Excise-Commercial Taxes Building, Opp:Gandhi Bhavan, Nampally, HYDERABAD.
- 2 The Appellate Deputy Commissioner of Commercial Taxes, KURNOOL, Kurnool District.
- 3 The Commercial Tax Officer, No.II Circle, CHITTOOR, Chittoor District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction particularly in the nature of Writ of

Mandamus, directing the impugned proceedings of the first respondent, namely the Additional Commissioner of Commercial Taxes (Legal), Hyderabad dated 31-07-2004 in CCT's Ref.No.LV(3)/1760/2004 rejecting the stay petitioner relating to assessment year 2000-2001 observing the petitioner is in excess payment of Rs.5,607/- in terms of assessment order dated 11-01-2002(annexure-P1) whereas the order of revised assessment dated 19-02-2004 was appealed from before the second respondent herein, raising additional liability to tax of Rs.49,392/- (annexure-P2) as illegal, arbitrary and improper, unjust and contrary to the statutory assessment order of 19-02-2004 and also opposed to the principles of natural justice apart from also suffering from the vice of non application of mind and consequently set aside the notice of the third respondent dated 02-09-2004 (annexure-P7) and direct the third respondent herein not to take any coercive steps pursuant to the urgent notice in Rc.B./90/2004, dt. 02-09-2004 pending disposal of the appeal on the file of Appellate Deputy Commissioner of Commercial Taxes, Kurnool.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

The Court at the stage of admission made the following ORDER:

(per BRSR,J)

The first appellate authority vide its order dated 29-04-2004 rejected the stay petition filed by the petitioner herein in a printed proforma. In our considered opinion, this practice of disposal of the stay petitions by the appellate authorities in printed proformas is not proper since they do not reflect any application of mind by the appellate authorities to the facts in each case. The appellate authority while exercising its power to grant or refused to grant stay is required to take the relevant facts into consideration and pass a reasoned order, if not a detailed one while disposing of the stay petitions. We find it difficult to approve the routine and mechanical orders that are being invariably passed by the first appellate authority as

is evident from the order dated
29-04-2004.

The petitioner having left with no other option moved the revisional authority against the order dated 29-04-2004 and the revisional authority also dismissed the stay petition filed by the petitioner herein on the ground that "the assessment order discloses that there is an excess tax of Rs.5,607/- against, which Form "C" appears to have been issued." The revisional authority obviously misdirected itself to the question that was required to be considered and accordingly, disposed of the stay petition as if no coercive steps were being taken against the petitioner for realization of any tax. The revisional authority failed to take into consideration the fact that the assessing authority revised the assessment order vide proceedings dated 19-02-2004 and found the balance of Rs.49,855/- liable to be paid by the petitioner. This is the subject matter of the appeal before the appellate authority. The petitioner wanted stay of collection of this amount during the pendency of the appeal. Neither the appellate authority nor the revisional authority adverted to these aspects of the matter.

In the circumstances, both the orders referred to herein above are set aside. The appellate authority is now directed to pass appropriate order on the stay petition filed by the petitioner bearing in mind the observations made in this order. The petitioner shall appear before the appellate authority on 06-12-2004 along with a copy of this order and the appellate authority shall immediately take up the application for hearing of the stay petition and pass appropriate orders within three days thereafter.

The writ petition is accordingly allowed. There shall be no order as to costs.

B.SUDERSHAN REDDY, J

DATE: 29th November, 2004

T.CH.SURYA RAO, J

Note: furnish copy of the order day after tomorrow.

B/o

ks/kvni

To

- 1 The Additional Commissioner of Commercial Taxes (Legal), O/o. The Commissioner of Commercial Taxes, Excise-Commercial Taxes Building, Opp:Gandhi Bhavan, Nampally, HYDERABAD.
- 2 The Appellate Deputy Commissioner of Commercial Taxes, KURNOOL, Kurnool District.
- 3 The Commercial Tax Officer, No.II Circle, CHITTOOR, Chittoor District.
- 4 Two CCs to the Government Pleader for Commercial Taxes, A.P.High Court Buildings, Hyderabad (OUT).
- 5 Two CD copies.